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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

NORTHERN DYNASTY MINERALS  
LTD., *et al.*,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, *et al.*,

Defendants,

and

BRISTOL BAY NATIVE ASSOCIATION,  
INC., *et al.*,

Intervenor-Defendants.

Case No. 3:24-cv-00059-SLG and  
consolidated cases

**THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA'S  
MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN  
SUPPORT OF PLAINTIFFS**

*Northern Dynasty Minerals Ltd., et al. v. U.S. Environmental Protection Agency, et al.*  
No. 3:24-cv-00059-SLG and consolidated cases

The Chamber of Commerce for the United States of America (“Chamber”) respectfully moves this Court for leave to file the accompanying *amicus curiae* brief in support of Plaintiffs’ Opening Brief on Summary Judgment filed in the above-captioned matter on October 3, 2025. The Chamber seeks to address the nationwide business interests at stake that relate to the U.S. Environmental Protection Agency’s (“EPA”) interpretation of its Clean Water Act (“CWA”) Section 404(c) authority.

Counsel for the Chamber contacted counsel of record for all parties to seek their consent for the filing of the accompanying *amicus curiae* brief. Plaintiffs do not oppose this motion. Defendants and all Intervenor-Defendants (Bristol Bay, SalmonState, and Trout Unlimited) take no position on the motion.

### **STATEMENT OF INTEREST<sup>1</sup>**

The Chamber is the world’s largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus* briefs in cases, like this one, that raise issues of concern to the nation’s business community.

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<sup>1</sup> No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

The legal issues at stake in this litigation are important to *amicus* and its members, including those who operate subject to the potential threat of EPA’s exercising Section 404(c) authority to prohibit their projects. More generally, the Chamber’s members have a strong interest in fair, consistent, and predictable permitting processes, and in ensuring that agencies properly consider economic impacts when making decisions that affect businesses. To that end, *amicus* filed a comment on the May 2022 Proposed Determination, 87 Fed. Reg. 32021, in September 2022, opposing the application of Section 404(c) authority to block the Pebble Mine project and raising concerns about the harmful precedential impact that such a step would have on the U.S. economy. *Amicus* also sent a letter to the EPA in June 2025 asking that EPA withdraw the Section 404(c) decision that is at issue in this litigation. If upheld, EPA’s Section 404 veto of the Pebble Mine would invert ordinary principles of reasoned decision-making, encourage the unpredictable and overbroad application of the Section 404 process, and disrupt important industries in which many of the Chamber’s members participate.

### **ARGUMENT**

In this case, Plaintiffs argue, among other things, that when EPA exercised its authority under Section 404(c) to block the Pebble Mine project, EPA improperly excluded from consideration various costs that the agency should have considered, including the lost benefits of forgone projects. This Court’s decision on this issue will have implications for stakeholders across the many important industries that the Chamber represents.

The district courts have “broad discretion to appoint amici curiae.” *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982) (overruled on other grounds). No rule governs the manner in which an *amicus* brief is filed in this Court, which looks to the Federal Rules of Appellate Procedure to determine the propriety of *amici*. See *Dep’t of Fish & Game v. Fed. Subsistence Bd.*, No. 3:20-CV-00195-SLG, 2021 WL 6926426, at \*1 (D. Alaska Aug. 24, 2021). Those Rules consider “whether the movant has an interest in the litigation, whether the *amicus* brief would be beneficial for the court, and whether the issues discussed in the *amicus* brief are relevant to the case.” *Id.*

As this Court has stated, “[a]micus briefs are frequently welcome . . . concerning legal issues that have potential ramifications beyond the parties directly involved or if the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Southcentral Found. v. Alaska Native Tribal Health Consortium*, 2022 WL 1184079, at \*2 (D. Alaska Apr. 21, 2022) (citation and quotation marks omitted); see *Neonatology Assocs., P.A. v. Comm’r of Internal Revenue*, 293 F.3d 128, 132 (3d Cir. 2002) (Alito, J.) (*amici* may assist the court by “explain[ing] the impact a potential holding might have on an industry or other group”).

The Chamber seeks the opportunity to assist the court by sharing the perspective of the business community on the necessity and importance of considering cost in EPA’s decision-making under Section 404(c), which is directly at issue in this case. The Chamber and its members have participated in administrative processes and court cases involving a wide range of agency actions, across a wide range of statutes and regulatory

regimes, affecting a wide range of U.S. industries—often in cases where agencies are allowed or required to consider costs in their decision-making. Given its extensive membership, the Chamber offers a unique perspective on the larger legal and practical implications of such issues.

### **CONCLUSION**

For the reasons set forth above, the Chamber respectfully requests that the Court grant leave to file the accompanying *amicus curiae* brief in support of the Plaintiffs.

Dated November 24, 2025.

/s/ Travis Annatoyn

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## **CERTIFICATE OF SERVICE**

I hereby certify that on November 24, 2025, I filed a true and correct copy of the foregoing document with the Clerk of the Court for the United States District Court – District of Alaska by using the CM/ECF system, thereby serving counsel of record who are registered CM/ECF users via the CM/ECF system.

*/s/ Travis Annatoyn*

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Travis Annatoyn

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